

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

United States of America, Complainant, vs. Tenampa Ballroom,
Respondent; 8 U.S.C. 1324a Proceeding; Case No. 88100088.

JUDGMENT BY DEFAULT

On August 29, 1988, Complainant, the Immigration and Naturalization Service (INS), filed its complaint (8 USC 1324a Proceeding) with the Office of the Chief Administrative Hearing Officer (OCAHO) against Tenampa Ballroom, the Respondent. OCAHO docketed the complaint as Case NO. 88100088. By date of September 2, 1988 the Chief Administrative Hearing Officer issued a Notice of Hearing on the INS's complaint, attached a copy of the complaint to the notice of hearing, and mailed both by certified mail to the respondent.

Among other provisions, the Notice of Hearing advised respondent (Tenampa Ballroom) that an answer to the complaint must be filed within 30 days after receipt of the complaint. Paragraph 3 of the notice of hearing warned Respondent:

3. If the Respondent fails to file an answer within the time provided, the Respondent may be deemed to have waived his/her right to appear and contest the allegations of the Complaint, and the Administrative Law Judge may enter a judgment by default along with any and all appropriate relief.

I take official notice that the records on file with the OCAHO reflect that Respondent was served by certified mail with a copy of the notice of hearing and the INS's complaint on September 6, 1988. Alleging that Respondent had violated provisions of 8 USC 1324a, the complaint incorporated a June 30, 1988 notice of intent to fine (NIF) issued by the INS and served in person on the Respondent on June 30, 1988. The NIF alleges the following counts as violations of Section 274A(a) of the Immigration and Nationality Act (the Act):

I. COUNT ONE

(a) On or about April 18, 1988 you hired for employment in the United States Jose Francisco Santana-Tamez, an alien not authorized to work in the United States.

(b) You hired Jose Francisco Santana-Tamez knowing that he was not authorized to work in the United States.

II. COUNT TWO

(a) On or about April 18, 1988, you hired Jose Francisco-Santana-Tamez for employment in the United States.

(b) You failed to prepare the Employment Eligibility Verification Form (I-9) for Jose Francisco Santana-Tamez.

III. COUNT THREE

(a) On or about September 1987 you hired Nora Escalante-Lobos for employment in the United States.

(b) You failed to properly complete Section 2 of the Employment Verification Form (I-9) for Nora Escalante-Lobos, within three business days of hire.

(c) Or in the alternative, you failed to properly complete Section 2 of the Employment Verification Form I-9 for Nora Escalante-Lobos.

IV. COUNT FOUR

(a) On or about July 1987 you hired Maria Gonzalez-Linares for employment in the United States.

(b) You failed to properly complete Section 2 of the Employment Verification Form (I-9) for Maria Gonzalez-Linares within three business days of hire.

(c) Or in the alternative, you failed to properly complete Section 2 of the Employment Verification Form I-9 for Maria Gonzalez-Linares.

V. COUNT FIVE

(a) On or about May 3, 1988 you hired Graciela Garcia for employment in the United States

(b) You failed to properly complete Section 2 of the Employment Verification Form (I-9) for Graciela Garcia within three business days of hire.

(c) Or in the alternative, you failed to properly complete Section 2 of the Employment Verification Form I-9 for Graciela Garcia.

VI. COUNT SIX

(a) On or about March 1, 1988 you hired Martha Hernandez for employment in the United States,

(b) You failed to properly complete Section 2 of the Employment Verification Form (I-9) for Martha Hernandez within three business days of hire.

(c) Or in the alternative, you failed to properly complete Section 2 of the Employment Verification Form I-9 for Martha Hernandez.

VII. COUNT SEVEN

(a) On or about May 1987 you hired Rosa Herlinda-Garza for employment in the United States.

(b) You failed to properly complete Section 2 of the Employer Verification Form (I-9) for Rosa Herlinda-Garza within three business days of hire.

(c) Or in the alternative, you failed to properly complete Section 2 of the Employment Verification Form I-9 for Rosa Herlinda Garza.

VIII. COUNT EIGHT

(a) On or about May 3, 1988 you hired Rosalinda Cura for employment in the United States.

(b) You failed to properly complete Section 2 of the Employer Verification Form (I-9) for Rosalinda Cura within three business days of hire.

(c) Or in the alternative, you failed to properly complete Section 2 of the Employment Verification Form I-9 for Rosalinda Cura.

IX. COUNT NINE

(a) On or about May 1988 you hired Norma Escalante-Lobos for employment in the United States.

(b) You failed to properly complete Section 2 of the Employer Verification form I-9 for Norma Escalante-Lobos.

X. COUNT TEN

(a) On or about July 1987 you hired Dora Canales-Garza for employment in the United States

(b) You failed to properly complete Section 2 of the Employer Verification Form I-9 for Dora Canales-Garza.

**IN RESPECT TO COUNT I THE FOLLOWING PROVISION
OF LAW APPLIES:**

Section 274A(a)(1)(A) of the Immigration and Nationality Act, which renders it unlawful for a person or other entity to hire an alien, for employment in the United States, after November 6, 1986 knowing the alien is unauthorized to work in the United States.

**IN RESPECT TO COUNTS II, III, IV, V, VI, VII, VIII, IX, AND X THE
FOLLOWING PROVISION OF LAW APPLIES:**

Section 274A(a)(1)(B) of the Immigration and Nationality Act, ('`the Act') which renders it unlawful for a person or other entity to hire, for employment in the United States, an individual without complying with the verification requirements of Sections 274A(b) of the Act, which requires a person or entity to verify, under penalty of perjury, on the Employment Eligibility Verification Form (Form I-9), the identity and employment eligibility of all individuals hired after November 6, 1986.

In the NIF the INS warns that it would seek an order fining Respondent \$1200.00 on Count One, \$200.00 on Count Two, \$200.00 on Count Three, \$200.00 on Count Four, \$200.00 on Count Five, \$200.00 on Count Six, \$200.00 on Count Seven, \$200.00 on Count Eight, \$200.00 on Count Nine and \$200.00 on Count Ten. The complaint also seeks an order for those amounts.

Although the Respondent, by its Attorney Ms Thelma O. Garcia, filed a July 29, 1988 letter in response to the NIF asserting its denial of the merits and requesting a hearing, the Respondent has not filed an answer to the complaint as required by law. 28 CFR 68.6(a) As the complaint was served by mail, Respondent's answer was due 35 days after Respondent's receipt on September 6, 1988. 28 CFR 68.5(d)(2); 68.6(a). Thus the due date was Tuesday, October 11, 1988.

No answer having been filed by the Respondent, Complainant, by date of October 13, 1988 has submitted its motion for default judgment, with a copy mailed to Respondent. Complainant included with its motion a proposed judgment by default.

Respondent, Tenampa Ballroom, having failed to file an answer, and the time for filing same having elapsed, I find Respondent has waived its right to appear and contest the allegations of the complaint, and that a judgment by default is appropriate. 28 CFR 68.6(b). Accordingly,

I FIND RESPONDENT, Tenampa Ballroom, in default. I THEREFORE FIND the Respondent committed the acts alleged in

Counts One, Two, Three, Four, Five, Six, Seven, Eight, Nine, and Ten of the Notice of Intent to Fine and in the complaint, and I CONCLUDE that, by so doing, the Respondent violated Section 274A of the Immigration and Nationality Act (the ``Act''), 8 USC 1324a. Consequently,

I ORDERED Tenampa Ballroom to take the following action:¹

1. Cease and desist from violating Section 274A(a)(1)(A), 8 USC 1324a(a)(1)(A), of the Immigration and Nationality Act, which renders it unlawful for a person or other entity to hire an alien for employment in the United States, after November 6, 1986, knowing the alien is unauthorized to work in the United States.

2. Comply with Section 274A(b), 8 USC 1324a(b), of the Immigration and Nationality Act with respect to individuals hired, recruited or referred, for a fee, for employment, during a period of three years.

3. Pay a Civil Money Penalty in the amount of \$3000.00 in the form of a cashier's check, money order, or bank check made payable to the ``Immigration and Naturalization Service'' and deliver same to: CHIEF PATROL AGENT UNITED STATES BORDER PATROL 2301 SOUTH MAIN, MCALLEN, TEXAS 78503.

Dated at Atlanta, Georgia this 21st day of October, 1988.

RICHARD J. LINTON
Administrative Law Judge

¹Review of this final order may be obtained by complying with the provisions of 28 CFR 68.52.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER
ADMINISTRATIVE REVIEW AND FINAL AGENCY ORDER VACATING THE
ADMINISTRATIVE LAW JUDGE'S DECISION AND ORDER
FINAL AGENCY ORDER No. 10

United States of America, Complainant v. Tenampa Ballroom
Respondent; 8 U.S.C. 1324a Proceeding; Case No. 88100088.

Vacation by the Acting Chief Administrative Hearing Officer of the
Administrative Law Judge's Judgment by Default

On October 21, 1988, the Honorable Richard J. Linton, the
Administrative Law Judge assigned to this case, issued an Order regarding
the above-styled proceeding entitled ``Judgment by Default.''. The
Administrative Law Judge's Order was based on a Motion for Default
Judgment filed by the Complainant on October 13, 1988. Pursuant to Title
8, United States Code, Section 1324a(e)(6) and Section 68.52 of the
applicable rules of practice and procedure, appearing at 52 Fed. Reg.
44972-85 (1987) [hereinafter Rules] (to be codified at 28 C.F.R. Part
68), the Acting Chief Administrative Hearing Officer, upon review of the
Administrative Law Judge's Order, and in accordance with Section 68.52
of the Rules, supra, vacates the Administrative Law Judge's Order.

The Administrative Law Judge's Judgment by Default, wherein he
dismisses the proceedings, was issued eight (8) days after the
Immigration and Naturalization Service filed a Motion for Default
Judgment. Pursuant to Section 68.5 and 68.7 of the Rules, supra, this
Judgment was issued prior to the expiration of Respondent's time for
filing an answer to the Motion. Accordingly, the Administrative Law
Judge's Judgment by Default is hereby vacated and Respondent is given
until November 23, 1988, to file an answer Complainant's Motion for
Default Judgment.

SO ORDERED:

Date: November 8, 1988

RONALD J. VINCOLI
Acting Chief Administrative Hearing Officer